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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/581,912	01/12/2001	Willem Frederik Van Eelen	BO42358	4846
7590 03/19/2004			EXAMINER	
Young & Thompson Second Floor 745 South 23rd Street Arlington, VA 22202			SAUCIER, SANDRA E	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

09/581,912

**Applicant(s)**

VAN EELEN ET AL.

**Examiner**

Sandra Saucier

**Art Unit**

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Priority*

Receipt is acknowledged of papers filed under 35 U.S.C. 119 (a)–(d) based on an application filed in PCT/NL97/00710 on 12/18/97. Applicant has not complied with the requirements of 37 CFR 1.63(c), since the application data sheet does not acknowledge the filing of any foreign application. A new application data sheet is required in the body of which the present application should be identified by application number and filing date.

Please either submit a new application data sheet or a request for a corrected filing receipt which includes the foreign priority claim.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Claim Rejections – 35 USC § 112*

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 appears from the preamble to have two components, that is a soup and the meat product of claim 16. However, the body of the claim appears to have only one component, the meat product of claim 16.

In claim 23, what is a biscuit dried granule? This does not appear to be a term of food art. Also, in a Markush group, the last two items should be separated by “and” not “or”.

### *Claim Rejections – 35 USC § 102*

Claims 16, 17, 18, 19, 20, 21, 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Yamamoto *et al.* [U] or Molnar *et al.* [V].

The claims are directed to a meat product consisting of *in vitro* produced animal cells in a three dimensional form, free of fat, tendon, bone, gristle, wherein the cells are selected from muscle, stem or somite cells, and wherein the product is suitable for animal or human consumption.

Yamamoto *et al.* disclose smooth muscle cells produced in vitro in a three dimensional form. The product has not been cultured with antibiotics. (See page 13, Materials and Methods) and is, thus, suitable for animal/human consumption.

Molnar *et al.* disclose skeletal muscle cells in a three dimensional form which have not been cultured with antibiotics (page 387, Materials and Methods) and is, thus, suitable for animal/human consumption.

***Claim Rejections – 35 USC § 103***

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto *et al.* [U] or Molnar *et al.* [V].

Claim 22 is directed to a mass limitation of the cultured muscle cell product.

Neither Yamamoto *et al.* nor Molnar *et al.* disclose any limitations to the potential scale of the process or the amount of product produced. Changes in the size of a product where the product would not perform differently the prior art is not sufficient to overcome the prior art. See MPEP 2144.04 IV. A.

Although the use to which the product may be put in the prior art is not the same use as the instant use, the product AS CLAIMED is not distinct from the product AS DISCLOSED in the prior art. Please note the instant claims are product claims, not method claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra Saucier whose telephone

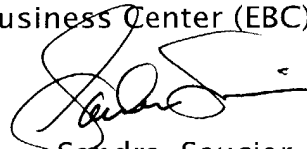
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number is (571) 272-0922. The examiner can normally be reached on Monday, Tuesday, Wednesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, M. Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sandra Saucier  
Primary Examiner  
Art Unit 1651